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DISTRICT OF UTAH
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Attorneys for Defendants Union Pacific Corporation and Union Pacific Railroad Company

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

TERRY FULLWILEY,

Plaintiff,

v.

UNION PACIFIC CORPORATION (a Utah
Corporation), and UNION PACIFIC
RAILROAD COMPANY (a Delaware
Corporation),

Defendants.

**DEFENDANTS' MOTION FOR RULE 35
MEDICAL EXAMINATION**

(Filed Under Seal)

Case No.: 2:04-CV-00671 DB

Judge: Dee Benson

Magistrate: David O. Nuffer

Pursuant to Rule 35 of the Federal Rules of Civil Procedure, Defendants Union Pacific Corporation and Union Pacific Railroad Company (collectively, "Union Pacific" or "Defendants") respectfully move this Court for an order permitting them to conduct a psychological evaluation of Plaintiff Terry Fullwiley ("Fullwiley" or "Plaintiff"). Union Pacific again asks this Court for assistance in permitting Defendants to conduct routine discovery on a critical area of inquiry in this litigation by authorizing a Rule 35 examination of Fullwiley's emotional condition. Notwithstanding that Fullwiley has brought two separate emotional distress

claims, that he alleges Union Pacific caused him "severe," "extreme" and ongoing emotional distress, that he sought professional treatment for his condition, and that his alleged damages stem almost solely from his claimed emotional distress, Fullwiley contends that his emotional state is not "in controversy" and that no good cause exists for a Rule 35 examination. In fact, even a cursory review of Fullwiley's own pleadings and discovery to date clearly establishes that Fullwiley's emotional state is not only "in controversy," but indeed is the heart of this litigation, creating ample cause for Rule 35 inquiry. For these reasons, the Court should permit Union Pacific to engage in a routine Rule 35 examination.

DATED this 23 day of June, 2005.

RAY QUINNEY & NEBEKER P.C.

A handwritten signature in cursive script, appearing to read "Robert O. Rice", written over a horizontal line.

Janet Hugie Smith
Robert O. Rice
Jonathan G. Pappasideris
Attorneys for Defendants

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing **DEFENDANTS' MOTION FOR RULE 35 MEDICAL EXAMINATION** was sent via hand delivery on this 23rd day of June, 2005 to the following:

Lauren I. Scholnick
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